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EXAMINER

FISCHER, ANDREW J

ART UNIT PAPER NUMBER

3627

DATE MAILED: 05/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/579,918

Applicant(s)

LEUNG, PHILIP C M

Examiner

Andrew J. Fischer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12-22 and 25-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-22 and 25-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Acknowledgements***

1. Applicants' amendment filed February 17, 2004 (Paper No. 10) is acknowledged.

Accordingly, claims 1-10, 12-22, 25-28 remain pending.

2. It is the Examiner's position that Applicant's response contains a typographical error:

Mr. Douglas J. Miller is not the inventor of record.

3. This Office Action is written in OACS. Because of this, the Examiner is unable to control formatting, paragraph numbering, font, spelling, line spacing, and/or other word processing issues. The Examiner sincerely apologizes for these errors.

### ***Election of Species***

4. Applicant asserts that each of species A1-A6 are patentably distinct from each other.

Applicant also asserts that each of species B1-B6 are also patentably distinct from each other.

Because Applicant has not provided any explanation as to why they are patentably distinct, the Examiner maintains his position that the species represented by the figures noted above are not patentably distinct.

### ***Claim Rejections - 35 USC §112 2<sup>nd</sup> Paragraph***

5. The following is a quotation of the 2<sup>nd</sup> paragraph of 35 U.S.C. §112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 25-28 are rejected under 35 U.S.C. §112, 2<sup>nd</sup> paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as

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the invention. In claims 25 and 26, it is unclear what is the corresponding structure of the “means for transferring information . . . .” Regarding the “means for” phrases, Applicant is reminded, “For claim clauses containing functional limitations in ‘means for’ terms pursuant to §112 ¶ 6, the claimed function and its supporting structure in the specification must be presented with sufficient particularity to satisfy the requirements of §112 ¶ 2.” *S3 Inc. v. nVIDIA Corp.*, 259 F.3d 1364, 1367, 59 USPQ2d 1745, 1747 (Fed. Cir. 2001) (citations omitted). In other words, “[f]ailure to describe adequately the necessary structure, material, or acts corresponding to a means-plus-function limitation in the written description means that the drafter has failed to comply with Section 112, Para. 2.” *Atmel Corp. v. Information Storage Devices, Inc.*, 198 F.3d 1374, 1380 53 USPQ2d 1225, 1229 (Fed. Cir. 1999) citing *In re Dossel*, 115 F.3d 942, 945, 42 USPQ2d 1881, 1884 (Fed. Cir. 1997)).

7. The Examiner finds that because particular claims 25 and 26 are indefinite under 35 U.S.C. §112 2<sup>nd</sup> paragraph, it is impossible to properly construe claim scope at this time. See *Honeywell International Inc. v. ITC*, 68 USPQ2d 1023, 1030 (Fed. Cir. 2003) (“Because the claims are indefinite, the claims, by definition, cannot be construed.”). However, in accordance with MPEP §2173.06 and the USPTO’s policy of trying to advance prosecution by providing art rejections even though these claim are indefinite, the claims are construed and the art is applied *as much as practically possible*.

### ***Claim Rejections - 35 USC §102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office Action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1, 4-9, 12-22, and 25-28 are rejected under 35 U.S.C. §102(e) as being anticipated by Keillor et. al. (U.S. 5,917,433) ("Keillor"). Keillor discloses a computer system having a trailer tracking program (which tracks assets) which receives information (status) regarding the trailer and stores the information in a record (inherent); a plurality of terminals (inherent in any trucking operation); a terminal interface (the interface to 22); a terminal management system (the operating system of each terminal); an access restriction system (inherent in all wireless networks).

### ***Claim Rejections - 35 USC §103***

10. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 2 is rejected under 35 U.S.C. §103(a) as being unpatentable over Keillor in view of Nijenhuis (PCT/NL98/00128). Keillor discloses as discussed above but does not directly disclose

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a loading pad. Nijenhuis teaches a terminal (1) with a loading pad (Figure 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Keillor as taught by Nijenhuis to include a terminal with a loading pad. Such a modification would have provided a system where the transfer time of trailers to rails was reduced.

12. Claim 3 is rejected under 35 U.S.C. §103(a) as being unpatentable over Keillor. Keillor discloses as discussed above but does not directly disclose a reservation system. The Examiner takes Official Notice that reservation systems for tractor-trailers are old and well known in the art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Keillor to include reservation systems. Such a modification would have provided greater efficiency to a container/trailer transportation system since a user could have reserved a trailer for a particular period of time.

13. Claim 10 is also rejected under 35 U.S.C. §103(a) as being unpatentable over Keillor. Keillor discloses as discussed above but does not directly disclose a gate and gate controller. The Examiner takes Official Notice that gates and gate controllers are old and well known in the art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Keillor to include gates and gate controllers at trailer destinations. Such a modification would have provided additional security by restricting access the terminal only to authorized persons.

14. Based upon Keillor, the Examiner notes again that containers and trailers are art recognized equivalents. See MPEP §2144.06.

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15. The Examiner concludes that Applicant has decided not to be his own lexicographer by indicating and defining claim limitations to have meanings other than their ordinary and accustomed meanings. To support this position, the Examiner relies on the following factual findings. First and as noted in the previous Office Action,<sup>1</sup> the Examiner has carefully reviewed the specification and prosecution history and can not locate any lexicographic definition(s). Second, and in spite of Applicant's statement in his Remarks,<sup>2</sup> the Examiner finds that not only has Applicant not pointed to definitional statements in his specification or prosecution history, Applicant has also not pointed to a term or terms in a claim with which to draw in those statements.<sup>3</sup> Third and also as noted in the previous Office Action (and except for his discussion of claim 5), Applicant has not attempted to 'clearly set forth' or 'clearly redefine' a particular claim term. *Bell Atlantic Network Services Inc. v. Covad Communications Group Inc.*, 262 F.3d 1258, 1268, 59 USPQ2d 1865, 1870 (Fed. Cir. 2001). Finally, Applicant's attempt at lexicography (including his discussion of claim 5) fails to define his terms with reasonable clarity, deliberateness, and precision. See *e.g. Anchor Wall Systems, Inc. v. Rockwood Retaining Walls, Inc.*, 67 USPQ2d 1865, 1872 (Fed Cir. 2003) ("Contrary to the district court's

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<sup>1</sup> See the Examiner's previous Office Action mailed September 10, 2003, Paper No. 8, Paragraph No. 14.

<sup>2</sup> See Applicant's Remarks, Paper No. 10, Page 9, ¶2, "Applicant asserts that he had every intention of being his own lexicographer when drafting the specification and initial set of claims."

<sup>3</sup> "In order to overcome this heavy presumption in favor of the ordinary meaning of claim language, it is clear that a party wishing to use statements in the written description to confine or otherwise affect a patent's scope must, *at the very least*, point to a term or terms in the claim with which to draw in those statements. [Emphasis added.]" *Johnson Worldwide Assocs. v. Zebco Corp.*, 175 F.3d 985, 989, 50 USPQ2d 1607, 1610 (Fed. Cir. 1999).

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claim construction, the written description does not describe 'with reasonable clarity, deliberateness, and precision,'" citing *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1874 (Fed. Cir. 1994).<sup>4</sup>

Accordingly and for due process purposes, the Examiner gives notice that for the remainder of the examination process (and unless expressly noted otherwise by the Examiner), the heavy presumption in favor of the ordinary and accustomed meaning is not overcome; the claims therefore continue to be interpreted with their "broadest reasonable interpretation . . . ." *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).<sup>5</sup> The Examiner now relies heavily and extensively on this interpretation.<sup>6</sup> Unless expressly noted otherwise by the Examiner, the preceding claim interpretation principles in this paragraph apply to all examined claims currently pending.

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<sup>4</sup> See also *In re Thrift*, 298 F.3d 1357, 1364, 63 USPQ2d 2002, 2006 (Fed. Cir. 2002) ("Although an applicant may be his own lexicographer, nothing in the specification defines the phrase 'speech user agent' differently from its ordinary meaning.") (citations omitted); *Abbott Labs. v. Baxter Pharm. Prods.*, 67 USPQ2d 1191, 1194 (Fed. Cir. 2003) ("Because the patentee did not deviate from the accustomed meaning of the disputed claim term, the term 'effective amount' is construed in view of its ordinary and customary meaning."); *Northern Telecom Ltd. v. Samsung Elecs. Co.*, 215 F.3d 1281, 1295, 55 USPQ2d 1065, 1075 (Fed. Cir. 2000) ("Vagueness and inference cannot overcome an ordinary meaning of a claim term . . . .");

<sup>5</sup> See also *In re Bass*, 314 F.3d 575, 577, 65 USPQ2d 1156, 1158 (Fed. Cir. 2002) ("In examining a patent claim, the PTO must apply the broadest reasonable meaning to the claim language, taking into account any definitions presented in the specification. Words in a claim are to be given their ordinary and accustomed meaning unless the inventor chose to be his own lexicographer in the specification") (citations omitted); *In re Etter*, 756 F.2d 852, 858, 225 USPQ 1, 5 (Fed. Cir. 1985) (en banc); and MPEP §§ 2111 and 2111.01.

<sup>6</sup> See 37 C.F.R. §1.104(c)(3) which states in part: "the examiner may rely upon admissions by applicant . . . as to *any matter* affecting patentability . . . . [Emphasis added.]"



***Response to Arguments***

16. Applicant's arguments filed February 17, 2004 (Paper No. 10) have been fully considered but they are not persuasive.

17. Applicant argues that “[t]he Examiner has failed, however, to show a teaching in Keillor of equipping each terminal with a terminal management system that ‘pulls up a record corresponding to the trailer being transported when the trailer arrives at the terminal and modifies the record to reflect the trailer’s transportation status . . . .’”<sup>7</sup>

18. First, whether or not the Examiner ‘failed to show a teaching in the prior art’ of a particular feature is not determinative of anticipation. If the reference anticipates—it anticipates—regardless of whether or not the Examiner pointed out or drew attention to this or that claim element. For example, a skilled artisan may not even recognize an element is inherent in a reference. In that case, the reference nevertheless anticipates. See *e.g. Schering Corp. v. Geneva Pharmaceuticals, Inc.*, 339 F.3d 1373, 1378, 67 USPQ2d 1664, 1668 (Fed. Cir. 2003) (“In sum, [the Federal Circuit’s] precedent does not require a skilled artisan to recognize the inherent characteristic in the prior art that anticipates the claimed invention.”). The Examiner concludes that the legal premise for Applicant’s arguments is improper. For this reason alone, Applicant’s arguments are unpersuasive.

19. Second, even assuming (for Applicant’s benefit) that Applicant properly phrased his arguments by stating that *e.g.* Keillor fails to teach a terminal management system that ‘pulls up a record corresponding to the trailer being transported when the trailer arrives at the terminal and modifies the record to reflect the trailer’s transportation status,’ this too is unpersuasive.

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Applicant is reminded that “[l]anguage that suggest or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. [Emphasis in original.]” MPEP §2106 II C. In this case, the Examiner finds that the phrase “when the trailer arrives at the terminal” is a conditional phrase which suggest or makes optional the particular claim structure argued by Applicant. Because of this conditional phraseology, the prior art need not actually disclose the particular structure argued by Applicant for the claim to be anticipated. In other words, the plain language of the claims (*i.e.* the use of “when”) renders such arguments moot. For this reason alone, Applicant’s arguments are unpersuasive.

20. Third, even making the remote assumptions that (1) Applicant properly phrased his arguments and (2) such conditional phrases must actually be disclosed in the prior art for anticipation, Applicant’s arguments remain unpersuasive. Keillor acknowledges” a variety of tracking systems have been developed which are designed to track the location and, in some instances, the status of freight during shipment.” [Column 1, ~ lines 34-36.] The Examiner finds that one of ordinary skill in the art would clearly want to know the status of the trailer or shipment, at least upon arrival at a destination. Moreover, “the position determining means can be responsive to location data entered or provided by the operator. Based upon the externally supplied location data, the position determining means can determine the current position of the trailer and can report the current position to the asset monitor.” [Column 8, ~ lines 10-18.]

21. Regarding lexicography, Applicant’s response is acknowledged. Moreover, the Examiner has never *required* Applicant to be there own lexicographer. It is Applicant’s burden

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<sup>7</sup> Applicant’s Remarks, Paper No. 10, Page 12, ¶2.

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to define his invention, not the Examiner's.<sup>8</sup> In complying this burden, Applicant is reminded that it is the Applicant—and *not* the Examiner—who drafted the claims, specification, and drawings and it is therefore *Applicant* who must decide whether or not to be his own lexicographer.<sup>9</sup> Along the same line of reasoning, whether or not Applicant chose this or that particular method of claim construction (*e.g.* lexicography or perhaps 35 U.S.C. §112 6<sup>th</sup> paragraph) is also completely within Applicant's discretion. In any event, one point with respect to lexicography is indisputable; it is the Examiner's factual determination that Applicant was provided with notice and given an opportunity to defend against the noticed liabilities.

22. Applicant's response to the Examiner definitions of claim terms is also acknowledged. In particular, Applicant argues that "such attempt to provide a separate dictionary definition of claim terms would confuse the issue more than it would help."<sup>10</sup> While Applicant's opinion is acknowledged, the Examiner is nevertheless required—should a dispute arise—to set forth a source for his interpretation of claim terms.

23. Additionally, Applicant's statement regarding definitions and the "nuances in the definitions of the claim terms"<sup>11</sup> is also acknowledged. The Examiner however respectfully disagrees since this is an incorrect statement of law.

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<sup>8</sup> *In re Morris*, 127 F.3d at 1056, 44 USPQ2d at 1029 quoting 35 U.S.C. §112 2<sup>nd</sup> paragraph, "It is the applicants' burden to precisely define the invention, not the PTO's."

<sup>9</sup> See *e.g. Lear Siegler, Inc. v. Aeroquip Corp.*, 733 F.2d 881, 221 USPQ 1025, 1031 (Fed. Cir. 1984) (noting that "It is the inventor applying for a patent who is permitted to be his own lexicographer," not the examiner).

<sup>10</sup> Applicant's Remarks, Paper No. 10, Page 9, ¶1.

<sup>11</sup> Applicant's Remarks, Paper No. 10, Page 10, ¶1 (first full paragraph).

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24. Regarding Claim 2, Applicant argues "Nijenhuis is not the loading pad described by Applicant and claimed in claim 2."<sup>12</sup> Whether or not the prior art discloses an element described by Applicant in his specification is not determinative of obviousness. If under the broadest reasonable interpretation the prior art discloses the claimed element, it meets the all elements test and the claim is rendered obvious.

25. Applicant's attempt at traversing the Official Notice findings as stated in the previous Office Action (Paper No. 8, Paragraph Nos. 10 and 11) is inadequate.

Adequate traversal is a two step process. First, Applicant must state his traversal on the record. Second and in accordance with 37 C.F.R. §1.111(b) which requires Applicant to specifically point out the supposed errors in the Office Action, Applicant must state *why* the Official Notice statement(s) are not to be considered common knowledge or well known in the art.

In this application, while Applicant has clearly met step (1), Applicant has failed step (2) since he has failed to argue *why* the Official Notice statement(s) are not to be considered common knowledge or well known in the art. Because Applicant's traversal is inadequate, the Official Notice statement(s) are taken to be admitted as prior art. See MPEP §2144.03.

26. Even if Applicant's traversal was adequate, his argument remains flawed. Applicant states that the Examiner has "failed to produce a reference which teaches or suggests the use of a gate and gate controller in the manner described by Applicant and claimed in claim 10." The Examiner is perplexed by this argument. If the Examiner provided a reference, why would he need Official Notice? Second, the Examiner respectfully requests Applicant to review the

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<sup>12</sup> Applicant's Remarks, Paper No. 10, Page 14, ¶3.

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officially noticed statements. Applicant's argument appears to challenge the Examiner's *choice of facts* he elected to take Official Notice of and not to challenge the veracity of the facts themselves. For these reasons, Applicant's arguments are not persuasive.

### ***Conclusion***

27. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. §1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 C.F.R. §1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

28. The following references are considered pertinent to Applicant's disclosure: Hahn-Carlson (U.S. 6,571,149 B1); Jones (U.S. 6,492,912 B1); Guidice (U.S. 6,463,420 B1); Takehara et. al. (U.S. 6,356,802 B1); Onozaki (U.S. 6,026,378 A); Wortham (U.S. 5,999,091A); Kennedy, III et. al. (U.S. 5,539,810); Hagenbuch (U.S. 4,831,539); and Ross et. al. (U.S. 2001/0041948 A1).

29. The following two (2) citations to the Manual of Patent Examining Procedure ("MPEP") apply to this Office Action: MPEP citations to Chapters 200, 700, 1800, and 2100 are from the

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MPEP 8<sup>th</sup> Edition, Rev 1, February 2003. All remaining MPEP citations are from MPEP 8<sup>th</sup> Edition, August 2001.

30. Because this application is now final, Applicant is reminded of the USPTO's after final practice as discussed in MPEP §714.12 and §714.13 and that entry of amendments after final is *not* a matter of right. "The refusal of an examiner to enter an amendment after final rejection of claims is a matter of discretion." *In re Berger*, 279 F.3d 975, 984, 61 USPQ2d 1523, 1529 (Fed. Cir. 2002) (citations omitted). Furthermore, suggestions or examples of claim language provided by the Examiner are just that—suggestions or examples—and do *not* constitute a formal requirement mandated by the Examiner. Unless stated otherwise by an express indication that a claim is "allowed," exemplary claim language provided by the Examiner to overcome a particular rejection or to change claim interpretation has *not been addressed* with respect to other aspects of patentability (*e.g.* §101 patentable subject matter, §112 1<sup>st</sup> paragraph written description and enablement, §112 2<sup>nd</sup> paragraph indefiniteness, and §102 and §103 prior art). Therefore, any claim amendment submitted under 37 C.F.R. §1.116 that incorporates an examiner suggestion or example, or simply changes claim interpretation will nevertheless require further consideration and/or search and a patentability determination as noted above.

31. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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32. In accordance with *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002), the Examiner finds that the Borland's Paradox for Windows User's Guide is additional evidence of what is basic knowledge or common sense to one of ordinary skill in this art. The reference is cited in its entirety. Paradox for Windows User's Guide exemplifies a typical relational database system. Because of the reference's basic content (which is self-evident upon examination of the reference) and after further review of the entire record including the prior art now of record in conjunction with the factors as discussed in MPEP §2141.03 (where practical), the Examiner finds that the Paradox for Windows User's Guide is primarily directed towards those of low skill in this art. Because the reference is directed towards those of low skill in this art, the Examiner finds that one of ordinary skill in this art must—at the very least—be aware of and understand, the knowledge and information contained within the reference.

33. In accordance with the USPTO's goals of customer service, compact prosecution, and reduction of cycle time, the Examiner has made every effort to clarify his position regarding claim interpretation and any rejections or objections in this application. Furthermore, the Examiner has again provided Applicants with notice—for due process purposes—of his position regarding his factual determinations and legal conclusions. The Examiner notes and thanks Applicant for his "Remarks" (Paper No. 10 beginning on page 8) traversing the Examiner's positions on various points. If Applicant disagrees with any additional factual determination or legal conclusion made by the Examiner in this Office Action whether expressly stated or

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implied,<sup>13</sup> the Examiner respectfully reminds Applicant to properly traverse the Examiner's position(s) in accordance with 37 C.F.R. §1.111(b) in his next properly filed response. By addressing these issues now, matters where the Examiner and Applicant agree can be eliminated allowing the Examiner and Applicant to focus on areas of disagreement (if any) with the goal towards allowance in the shortest possible time. If Applicant has any questions regarding the Examiner's positions or has other questions regarding this communication or even previous communications, Applicant is strongly encouraged to contact Examiner Andrew J. Fischer whose telephone number is (703) 305-0292. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's immediate supervisor, Robert Olszewski, can be reached at (703) 308-5183. The fax number for facsimile responses is now (703) 872-9306.



Andrew J. Fischer  
Patent Examiner  
Art Unit 3627

AJF  
May 2, 2004

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<sup>13</sup> *E.g.*, if the Examiner rejected a claim under §103 with two references, although not directly stated, it is the Examiner's implied position that the references are analogous art.